

**RESOLUTION NO. \_\_\_\_**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS APPROVING THE  
AGREEMENT FOR THE EMPLOYMENT OF CITY MANAGER BETWEEN THE CITY OF  
MILPITAS AND THOMAS C. WILLIAMS**

**WHEREAS**, the City Council of the City of Milpitas has selected Thomas C. Williams to serve as City Manager and Executive Director of the Milpitas Redevelopment Agency;

**WHEREAS**, Thomas C. Williams desires to serve as City Manager and Executive Director of the Milpitas Redevelopment Agency;

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Milpitas, as follows:

1. The Agreement for Employment of City Manager attached hereto as Exhibit A is hereby approved.
2. The Mayor and City Council are hereby authorized to sign the Agreement on behalf of the City.

PASSED AND ADOPTED this \_\_\_\_ day of \_\_\_\_\_ 2006, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

APPROVED:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Jose Esteves, Mayor

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

## **AGREEMENT FOR EMPLOYMENT OF CITY MANAGER**

This Agreement is made and entered into this 19<sup>th</sup> day of December, 2006, by and between the CITY OF MILPITAS ("the City"), a general law city, and THOMAS C. WILLIAMS ("Williams"). This Agreement ("Agreement") is dated for the convenience of the parties, as of December 19, 2006, and it will become effective as specified herein.

### **1. Appointment of City Manager:**

The City Council of the CITY hereby appoints Williams to the position of City Manager and Executive Director of the Redevelopment Agency, in and for the City of Milpitas, California.

### **2. Term of Agreement and At –Will Status:**

The term of this Agreement shall be from the date approved by the City Council until terminated by either party in accordance with the provisions of Section 4. Williams is an at will employee and shall serve at the pleasure of the City Council.

### **3. Duties and Responsibilities:**

a. Williams shall commence his duties on December 19, 2006.

b. Williams shall serve as the City Manager of the City and Executive Director of the Redevelopment Agency, and he shall be vested with the powers, duties and responsibilities set forth in Title VI, Chapter 1 of the Milpitas Municipal Code and California law. Williams shall perform the functions and duties specified under the laws of the State of California; the Municipal Code of the City; the Ordinances and Resolutions of the City; and such other duties and functions as the City Council or Redevelopment Agency may from time-to-time assign.

c. Williams agrees to devote his productive time, ability and attention to the CITY's business during the term of this Agreement. Williams shall not hold secondary employment, and shall be employed exclusively by the CITY. However, the CITY recognizes that Williams may actively participate in community affairs and shall be permitted to volunteer time, energy and expertise, and from time-to-time, to serve and hold office in charitable, non-profit, public service, service club, religious and/or community area organizations. As an exempt employee, Williams shall not receive overtime or extra compensation for work performed outside normal business hours.

4. Termination of Employment and Severance:

a. Williams may terminate this Agreement, with or without cause, by giving the CITY thirty (30) days written notice in advance of termination.

b. The City Council may terminate this Agreement, with or without cause.

c. If the CITY discharges Williams on or before December 18, 2007, for reasons other than those set forth in the third sentence of this paragraph, Williams shall be entitled to a lump sum severance payment equal to nine (9) months of salary and the continuation of medical, dental and vision benefits for nine (9) months after termination. If the City discharges Williams anytime after December 18, 2007, for reasons other than those set forth in the third sentence of this paragraph, Williams shall be entitled to a lump sum severance payment equal to six (6) months of salary and the continuation of medical, dental and vision benefits for six (6) months after termination. Such severance pay and benefits shall not be due or payable if Williams is dismissed upon or for conviction of a felony or a misdemeanor involving moral turpitude. Prior to payment by the City of any severance, Williams shall sign and deliver to the City a waiver in the form of Exhibit A, fully releasing the City (including its employees, officers and agents) from any and all claims by Williams.

5. Compensation:

a. Williams shall be paid an annual salary of \$199,175 (inclusive of 8% PERS contribution), plus other payments and benefits as from time-to-time may be provided to City Executive Staff. City agrees that it will consider an adjustment to the compensation payable to Williams if during calendar year 2007 the compensation paid to the highest paid department head as of the effective date of this Agreement is increased as a result of compaction within that department.

b. Williams shall receive the benefits identified in Exhibit B to this Agreement.

6. City-Provided Vehicle for Use for City Business:

Williams shall be provided a City vehicle for use on official City business and for travel to and from the City from his home. Williams agrees that he shall only use the vehicle as allowed herein. Insurance for and maintenance of the vehicle shall be provided by the City.

7. Indemnification:

The City shall defend, hold harmless and indemnify Williams against any tort, civil rights, personnel, discrimination, professional liability claim or demand or other legal action, whether groundless or otherwise, arising out of an alleged act of omission occurring in the performance of Williams' duties in accordance with the provisions of California Government Code Section 825 and provide a defense in accordance with Government Code Section 995. The City may decline to defend and/or indemnify only as permitted by the California Government Code. The City may compromise and settle any such claim or suit and pay the amount of any settlement or judgment therefrom.

8. Notices:

Notices pursuant to this Agreement shall be in writing given by deposit in the custody of the United States Postal Service, first class postage prepaid, addressed as follows:

**a. The CITY: Mayor and City Council**

City of Milpitas  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

**b. Williams**

Thomas C. Williams, City Manager  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

Alternatively, notices required pursuant to this Agreement may be personally served in the same manner as is applicable to civil judicial process. Notice shall be deemed given as of the date of personal service or as of the date of deposit of such written notice, postage prepaid, with the United States Postal Service.

9. Arbitration

a. Any controversy or claim arising out of or relating to this Agreement or the breach thereof, or arising out of or relating to Employee's employment or termination thereof, including but not limited to claims of employment discrimination based on federal and state law, which cannot be resolved among the parties themselves, shall, on the written request of either party served on the other within the applicable statute of limitations, be submitted and resolved by final and binding arbitration in a manner consistent with the Federal Arbitration Act, if applicable, or the California Code of Civil Procedure (including CCP Section 1283.05). Service of the written request shall be

made only be certified mail, with a return receipt requested. Time is of the essence; if the request is not served within a one-year period for claims arising out of this Agreement, or within the applicable statute of limitations for the alleged federal and state law claims, the complaining party's claim(s) shall be forever waived and barred before any and all forums, including, without limitation, arbitration or judicial forums.

b. The Arbitrator shall have no authority to alter, amend, modify or change any of the terms of this Agreement unless a provision expressly conflicts with applicable federal or state laws. Any arbitrator selected under this provision shall have the express authority to consider statutory violations of federal and state law in addition to disputes involving this Agreement. The decision of the Arbitrator shall be final and binding and judgment therein may be entered in any court having jurisdiction over the dispute.

c. The Arbitration shall be conducted under the National Rules ("Rules") for the Resolution of Employment Disputes of the American Arbitration Association ("AAA") current at the time of the dispute. In the event that any of the above Rules are determined to be in conflict with federal or state law, then the arbitrator shall have the authority to amend the Rules accordingly. The City shall be responsible for paying all the AAA's administrative and arbitrator's fees. In all other respects, the parties shall bear their own attorneys' fees and costs except as otherwise required by law. The parties shall have the right to conduct discovery which provides them with access to documents and witnesses that are essential to the dispute, as determined by the arbitrator. The arbitrator's written award shall include the essential findings and conclusions upon which the award is based.

d. The parties intend that this arbitration procedure is mandatory and shall be the exclusive means of resolving all disputes whether founded in fact or law between Williams and the City and/or its employees, elected officials, directors, agents, officers or managers arising out of or relating to this Agreement, the parties' employment relationship and/or the termination of that relationship, including, but not limited to, any controversies or claims pertaining to wrongful or constructive discharge, violations of the covenant of good faith and fair dealing, implied contracts, public policies, anti-discrimination statutes or any employment-related statutes. THE PARTIES EXPRESSLY WAIVE ANY CONSTITUTIONAL OR STATUTORY RIGHT TO HAVE ANY SUCH DISPUTE DECIDED IN A COURT OF LAW AND/OR BY A JURY IN A COURT PROCEEDING.

10. Bonding:

The City shall bear the full cost of any fidelity or other bond required under any law or ordinance.

11. Performance Evaluations:

The City Council shall review and evaluate the performance of Williams once per calendar year during the months of November or December, or on any other schedule deemed appropriate by the City Council. At the time of each evaluation, performance goals shall be discussed that will be used to assist in the evaluation of Williams' performance in the future. Williams will timely cause to be placed on the City Council agenda each year or as otherwise directed by the Council, a "closed session" for the purpose of this performance evaluation.

12. Training:

Williams is encouraged to maintain memberships in and to attend conferences of appropriate professional organizations including but not limited to, LOCC, ICMA, and the Santa Clara County City Managers Association. The City will provide reimbursement up to \$1,400 per fiscal year for continuing work-related education.

13. Miscellaneous:

a. The text herein shall constitute the entire agreement between the parties. This Agreement may not be modified, except by written agreement executed by both parties.

b. If any provision, or any portion thereof, contained in this Agreement is held unconstitutional, invalid or unenforceable, the remainder of this Agreement, or portion thereof, shall be deemed severable, shall not be affected and shall remain in full force and effect.

c. This Agreement shall be governed by the laws of the State of California.

d. This Agreement has been reviewed by attorneys for both parties. The parties agree that any ambiguity in this Agreement shall not be construed or interpreted against, or in favor of, either party.

e. This Agreement may be executed in counterparts containing original signatures.

**WILLIAMS:**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Thomas C. Williams

**CITY:**

DATED: \_\_\_\_\_

\_\_\_\_\_  
Jose S. Esteves, Mayor

DATED: \_\_\_\_\_

\_\_\_\_\_  
Robert Livengood, Vice Mayor

DATED: \_\_\_\_\_

\_\_\_\_\_  
Debbie Giordano, Councilmember

DATED: \_\_\_\_\_

\_\_\_\_\_  
Armando Gomez, Jr., Councilmember

DATED: \_\_\_\_\_

\_\_\_\_\_  
Althea Polanski, Councilmember

ATTEST:

\_\_\_\_\_  
Mary Lavelle, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

## EXHIBIT A

1. Releases:

In consideration for this payment, which provides consideration in addition to anything of value to which Williams is already entitled, Williams (for himself, his heirs, successors and assigns) fully and forever releases, discharges and covenants not to sue or otherwise institute or in any way actively participate in or voluntarily assist in the participation of a legal or administrative proceeding against the CITY (which term includes without limitation the City's employees, agents, representatives, attorneys, affiliated entities, commissions, boards, councils, departments, council members, elected and appointed officials, etc.) with respect to any and all manner of claims, complaints, liabilities, demands, causes of action, grievances, costs, expenses, attorneys' fees, damages, and obligations of every kind and nature, in law, equity or otherwise, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related to acts, conduct, or omissions related to his employment at any time prior to the Effective Date, including but not limited to tort law Government Code § § 54950-54962; contract law; wrongful discharge law; and the implied covenant of good faith and fair dealing, except as set forth below. Williams understands that this release precludes him from filing any new claim against the CITY, based on, or related to, acts or events taking place on or before the effective date of his termination, with the exception of any job-related worker's compensation claim. Williams understands that he is waiving his right to file a claim under the Age Discrimination in Employment Act of 1967 ("ADEA") (29 U.S.C. § 621 et seq.) or similar laws.

Williams understands and acknowledges that he has been given at least twenty-one (21) days to consider his release of claims under the ADEA, and that he expressly waives this 21 days notice provision. Williams further acknowledges that he has seven (7) days from the date he executes this Agreement to revoke his release under the ADEA; provided, however, that should Williams revoke his release, the City may in its sole discretion rescind this entire Agreement and obtain all amounts paid hereunder: \_\_\_\_ (Initials)

The PARTIES understand that by making the above waivers and releases they have forever surrendered every claim, complaint or cause of action of any kind or nature, whether known or unknown, suspected or unsuspected, at the time of the effective date of Williams' termination. However, Williams understands that the CITY cannot relieve or absolve him from possible liability regarding third party claims, and that this Agreement does not foreclose the CITY's right to indemnification for his asserted acts or omissions concerning third parties. The CITY understands that it still has to comply with any statutes, rules or regulations, or as otherwise required by law, requiring it possibly to defend and/or indemnify Williams against claims alleged to arise in the course of employment, subject to reservation of rights.

These releases are binding upon and inure to the benefit of the heirs, executors, representatives, assigns, agents, predecessors, successors, subsidiaries, divisions, affiliates, insurers, officers, board members, directors, attorneys, employees, administrators and investors of each of the PARTIES, as the case may be.



## **EXHIBIT B**

- **Retirement**

PERS 2.7% AT 55. The City pays full employee contribution, as part of Williams' salary. The City PERS contract shall provide for the PERS employee contribution to be considered annual compensation for retirement benefit purposes.

- **Vacation, Sick Leave, Holidays, Executive Leave**

Williams shall accrue leave benefits as provided by City Executive Staff upon the date Williams commences his duties as provided in Section 5 of the Agreement.

- **Other Leaves**

Williams shall receive all other leaves, (Bereavement, Family and Medical, Jury Duty, Military, etc.) as other management employees, as set forth in the Management MOU.

- **Life Insurance**

Equivalent to Milpitas Executive Staff

- **Associations and Subscriptions**

The City shall budget and pay for the professional dues and subscriptions of Williams necessary for his continuation and full participation in two (2) associations of his choice.

- **Long Term Disability**

The City shall provide Williams with long term disability insurance with a monthly benefit of \$5,000 per month and a ninety day waiting period.

- **Deferred Compensation**

The City shall pay \$900 per calendar year into a deferred compensation account for Williams.